Air Force Materiel Command

War-Winning Capabilities … On Time, On Cost

OPTIONS

Module Lead:
OO-ALC/PKCA
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Integrity ~ Service ~ Excellence

Course Overview

- **Length: 1-2 Hours**
- **Method of delivery: Slide Presentation**
- **Course contents:**
  - What's an Option?
  - When to Use Options
  - Regulations Covering Options
  - Contract Clauses for Options
  - Exercising Options
  - Caution Areas

Overview

- Definition
- Scope
- Use of Options
- Solicitations
- Contract Specifications
- Documentation
- Exercise of Options
- Provisions & Clauses
- Common Problems
- Summary

FAR Part 2.101 - Definitions

"Option" means a *unilateral right* in a contract by which, for a specified time, the Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

FAR Part 17.200 – Scope of Subpart

- **Not covered by FAR 17.200**
  - Services involving Construction
  - Architect-Engineer Services
  - Research & Development Services

FAR Part 17.202 – Use of Options

OPTIONS ARE INCLUDED WHEN IT IS IN THE GOVERNMENT'S BEST INTEREST TO DO SO.

FAR Part 17.202 – Use of Options

- **It is *not* in the Government's Best Interest when the requirements involve:**
  - Minimum economic quantities
    - i.e. quantities large enough to permit the recovery of startup costs and the production of the required supplies at a reasonable price
  - Delivery Requirements far enough in the future to permit competitive acquisition, production and delivery
- **Nor is it in the Government's Best**

FAR Part 17.202 – Use of Options

- **We *shall not* use options when:**
  - Contractor will incur undue risk
  - Market prices for supplies are likely to change
  - Option represents known firm requirements for which funds are available *unless*:
    - Basic quantity is a learning or testing quantity
    - Competition for option is impracticable

FAR Part 17.202 – Use of Options

- **However, always be mindful that:**
  - Government needs continuity of operations
  - Added cost of disrupted support

FAR Part 17.203 - Solicitations

What to include in your solicitation

- Appropriate option provisions & clauses
- Basis of Evaluation
- Allow for option quantities to be offered without limitation to price
- Solicitations that allow the offer of options at unit prices which differ from the unit prices for the basic requirement shall state that offerors may offer varying prices for options, depending on the quantities actually ordered and the dates when ordered
- If it is anticipated that the option will be exercised at time of contract award, state the price at which the option will be evaluated

FAR Part 17.203 – Solicitations (con't)

- **Limit option price to be no higher than the original requirement when:**
  - Option cannot be evaluated under 17.206
  - Future Competition for option is impracticable

FAR Part 17.203 - Solicitations (con't)

- **Solicitation arising from the above shall**
  - Specify that the government will accept proposal, as long as acceptance does not prejudice another offeror.
  - Limit to 50% of the original ordering quantity (unusual circumstances must be approved at one level above the contracting officer).

FAR Part 17.203 - Solicitations (con't)

Include the value of options in determining if the acquisition will exceed the World Trade Organization (WTO) Government Procurement Agreement or Free Trade Agreement Thresholds

FAR Part 17.204 -Contracts

The Contract Shall

- Specify limits on the purchase of additional supplies or services, or the overall duration of the term of the contract, including any extension
- State the period within which the option may be exercised
- Set the period to allow the contractor adequate lead time to ensure continuous production
- **Period may extend beyond contract completion date for Service Contracts**

FAR Part 17.204 -Contracts (con't)

- **Unless otherwise approved in accordance with Agency Procedures:**
  - Basic contract & options periods for *Services* Shall not exceed 5 years
  - Basic contract & options for *Supplies* Shall not exceed the requirement for 5 years
    - Does not apply to contracts for IT
    - Service Contract Act may limit further

DFARS 217.204 - Contracts

The ordering period for ID/IQ contracts

- **May be for <u>any</u> period up to 5 years**
- **May be extended for one or more successive periods with an option provided in the contract or a modification**
- **Shall not exceed 10 years unless:**
  - Agency head decides that exceptional circumstances exist
  - Must report to Congress when an ordering period will extend past ten years
  - Does Not apply to Definitive Quantity Contracts

DFAR Part 217.204 - Contracts (con't)

- **Reporting to Congress *does not* apply to**
  - Contracts Awarded under other statutory authority
  - A&AS service task orders
  - Definite quantity contracts
  - GSA Schedule contracts
  - Multi Agency contracts awarded by other than
    - NASA
    - DOD
    - Coast Guard

FAR Part 17.204 - Contracts (con't)

- **May express options for increased quantity of supplies or services in terms of**
  - Percentage of Line Items
  - Inclusion of specific Line Items
  - Additional numbered line items identified as options

FAR Part 17.204 Contracts (con't)

- **May express extensions in term as**
  - Amended Completion Date
  - Additional time for performance

FAR Part 17.205 Documentation

- **PCO provides in writing in the form of a Determination & Findings (D&F)**
  - Quantities or term under option
  - Notification period for exercise
  - Any limitation to option price
- **FAR Part 6 Justifications & Approvals (J&A) must cover the basic contract and its options**

FAR Part 17.207 Exercise of Options

- **PCO shall notify contractor within specified time period**
- **When contract provides for Economic Price Adjustment (EPA), effect shall be determined before option is exercised**

FAR Part 17.207 Exercise of Options

Tab 8 (j) Determination and Finding (D&F)

- **PCO will only exercise the option <u>after</u> determining in the D&F that:**
  - Funds are available
  - Requirement covered by the option fulfills an <u>existing Government need;</u>
  - The exercise of the option is the most advantageous method of fulfilling the Government's need, price and other factors considered; and
  - The option was synopsized, unless exempted by FAR 5.202(a)(11) or other appropriate exemptions in 5.202.

FAR Part 17.207 Exercise of Options

Tab 8 (j) Determination and Finding (D&F)

- **Will Determine Option Exercise on the following basis:**
  - New Solicitation fails to produce more advantageous offer
  - Informal Market Analyses
  - Time between award and option exercise is negligible

FAR Part 17.207 Exercise of Options

Tab 8 (j) Determination and Finding (D&F)

Other Factors to Consider:

- **Need for Continuity of Services**
- **Prior to exercise, written determination that exercise is in accordance with FAR Part 6 Full & Open Competition**
  - Must have been evaluated as part of the original competition at determined prices and quantities

FAR Part 17.207 Exercise of Options

Tab 8 (j) Determination and Finding (D&F)

D&F Should include:

- **Price of the Option**
- **Amounts determined by applying formulas provided in basic agreement**

FAR Part 17.207 Exercise of Options

CONTRACT MODIFICATION AUTHORITY SHALL CITE OPTION CLAUSE AS AUTHORITY

FAR 17.208 Solicitation Provisions & Clauses

- **52.217-3 EVALUATION OF OPTIONS**
  - Include unless precluded by 52.217-4

- **52.217-4 EVALUATION OF OPTIONS EXERCISED AT TIME OF CONTRACT AWARD**
  - Include when the PCO has determined that there is a “reasonable likelihood” option may be exercised, and may be exercised at time of award

FAR 17.208 Solicitation Provisions & Clauses

- **52.217-5 EVALUATION OF OPTIONS**
  - Solicitation contains option clause
  - Option will not be exercised at time of award
  - Firm Fixed Price, Fixed Price Economic Adjustment
  - Reasonable Likelihood option will be exercised

FAR 17.208 Solicitation Provisions & Clauses

- **52.217-6 OPTION FOR INCREASED QUANTITY (Other than Services)**
  - When inclusion of option is appropriate
  - When option and basic quantity are expressed as percentages.

FAR 17.208 Solicitation Provisions & Clauses

- **52.217-7 Option for Increased Quantity – Separately Priced Line Item when**
  - Option quantity is identified as a separately priced line item having the same nomenclature as a corresponding basic contract line item

FAR 17.208 Solicitation Provisions & Clauses

- **52.217-8 Option to Extend Services**
  - Services contracts when an option is contemplated
  - Wage rates only to be adjusted with revisions to wage rates provided by the Secretary of Labor
  - Statutorily cannot extend more than 6 months

FAR 17.208 Solicitation Provisions & Clauses

- **52.217-9 Option to Extend the Term of the Contract**
  - When the inclusion of an option is appropriate and it is necessary to include the following:
    - A requirement that the Government must give the contractor a preliminary written notice of its intent to extend the contract
    - A statement that an extension of the contract includes an extension of the option
    - A specified limitation on the total duration of the contract

FAR 17.208 Solicitation Provisions & Clauses

- **252.217-7000 EXERCISE OF OPTION TO FULFILL FOREIGN MILITARY SALES COMMITMENTS**
  - When an option may be used for FMS Requirements
  - Use Alternate I when the FMS country is not known at time of award
  - Do not use for establishment or replenishment of DoD inventories or stock
  - Or Acquisitions made under DoD cooperative logistics support arrangements

FAR 17.208 Solicitation Provisions & Clauses

- **252.217-7001 SURGE OPTION**
  - Industrial Capability Production Planning
    - Insert percentage increase the option represents
    - Change 30 days to longer periods if necessary
    - Change 24 month period if necessary

Common Problems Encountered with Options

- **Failure to exercise the option within the stated period of exercise. Once an option period has expired you lose the unilateral right to exercise and this creates the need for bilateral negotiations.**

Common Problems Encountered with Options

- **Contractor's may ask to get out of an option**
  - Argue that exercise of the option would cause serious harm to the contractor
    - We do not want to run a contractor into the ground, i.e. bankruptcy
- **Options are evaluated at award. The government would require a clear showing of changed circumstances. Contractor has a responsibility to honor their contractual commitments.**

Summary

- **Guidance for Options is found in FAR 17.200**
- **Options are included when it is in the government's best interest to do so**
- **Include all option clauses**
  - Only the clauses found in the contract will govern the contract
- **Option Periods**
  - Services - Basic contract & option periods shall not exceed 5 years
  - Supplies - Basic contract & options shall not exceed the requirement for 5 years
  - ID/IQ Contracts: Ordering period may be for <u>any</u> period up to 5 years - shall not exceed 10 years

Summary (continued)

- **Government has the *unilateral right* to exercise the option**
  - PCO shall notify contractor within specified time period
  - Once an option period has expired you lose the unilateral right to exercise and this creates the need for bilateral negotiations

Summary (continued)

- **PCO will only exercise the option after determining in the D&F that:**
  - Funds are available
  - Requirement covered by the option fulfills an existing Government need;
  - The exercise of the option is the most advantageous method of fulfilling the Government's need, price and other factors considered; and
  - The option was synopsized, unless exempted by FAR 5.202(a)(11) or other appropriate exemptions in 5.202.

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